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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 5

SIDNEY STREET,

Appellant,

—v.—

PEOPLE OF THE STATE OF NEW YORK,

Appellee.

APPEAL FROM THE COURT OF APPEALS
OF THE STATE OF NEW YORK

REPLY BRIEF OF APPELLANT

DAVID T. GOLDSTICK
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Of Counsel:

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RICHARD GREEN

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Appellant agrees that the scope and purpose of New York's flag desecration statute is as set forth in the brief of the Appellee.

> "In fine, we must protect our country at all times. The anticipation of an attempt to overthrow our basic tenets of democracy by arrogant behavior designed to flout our institutions, and flag burning is such an attempt, must be our prime concern. We cannot afford to experiment by permitting all acts and words denigrating our basic philosophies to freely reach the marketplace of ideas." *Brief of Appellee,* at 80.

The District Attorney confirms the overbroad scope of the statute which was suggested by Appellant in his Brief. *Brief of Appellant,* at 7-8. To the list of hypothetical situ-

ations which would fall within the statute's proscription, we might add, given the District Attorney's opinion that the legislature sought to "condemn the disrespect of a needed and worthy symbol", *Brief of Appellee,* at 85, and to prevent an act which "detracts from the respect one would ordinarily show for the flag", *id.* at 84, a public refusal to pledge allegiance to the flag. *West Virginia Board of Education* v. *Barnett,* 319 U. S. 624 (1943).

The highest law enforcement official in Kings County views the statute as a warrant to suppress certain words or acts which appear in his eyes as "arrogant behavior designed to flout our institutions". *Brief of Appellee,* at 80. The excess to which such a political *lettre de cachet* can lead is regrettably illustrated in *People* v. *Leyva.* In *Leyva* (summons annexed hereto as Exhibit I), a bookstore owner displayed a poster (a copy of which is annexed to this brief as Exhibit II) which a police officer believed violated New York's flag desecration law. The officer seized the offending poster and initiated criminal proceedings against the bookstore owner. The case is currently pending in the New York County Criminal Court.

The *Leyva* case is merely the most recent example of the overbroad application of the New York statute. Demonstrably, it stands as a constant threat to the exercise of robust dissent and must not be permitted to stand.

Respectfully submitted,

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Phil Ochs

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Judy Schaffner

Benjamin Spock

Henry Heggar

Ellen Stekert Mayer

M. Renates Hartogs

Pete Seeger

Paul Wallenstein

Henry Childs

Ellen Siddens

Buckley

ESS
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SUMMONS | THE CITY OF NEW YORK POLICE DEPARTMENT | Pct. 24 | Arrest No. 2673 | Serial No. 275

THE PEOPLE OF THE STATE OF NEW YORK VS.

Alfred Leyva — You are hereby summoned to appear

in the Criminal Court of the City of New York, County of New York Part 18, located at

No. 100 Centre St Street on the 14 day of Oct, 1968

at 930 o'clock in the Forenoon, to answer a criminal charge made against you by Plc Flanagan

for violation of 136 Gen Bus Law

Authorized by: Desk Officer Lt Kerwin — Issued by: Police Flanagan — Date 10/3/68

YOU MUST APPEAR AT THE TIME AND DATE INDICATED ABOVE

Should you fail to appear, in addition to a warrant being issued for your arrest, for the offense charged above, you may be charged with violation of Section 205.35 of the Penal Law, Bail Jumping in the Second Degree, a class A Misdemeanor. Class A Misdemeanors are punishable by a term of imprisonment not to exceed one year or, a fine of $1,000 or both.

ACKNOWLEDGEMENT OF DEFENDANT:

I, the undersigned, do hereby acknowledge receipt of the above summons, and do agree to appear as indicated above.

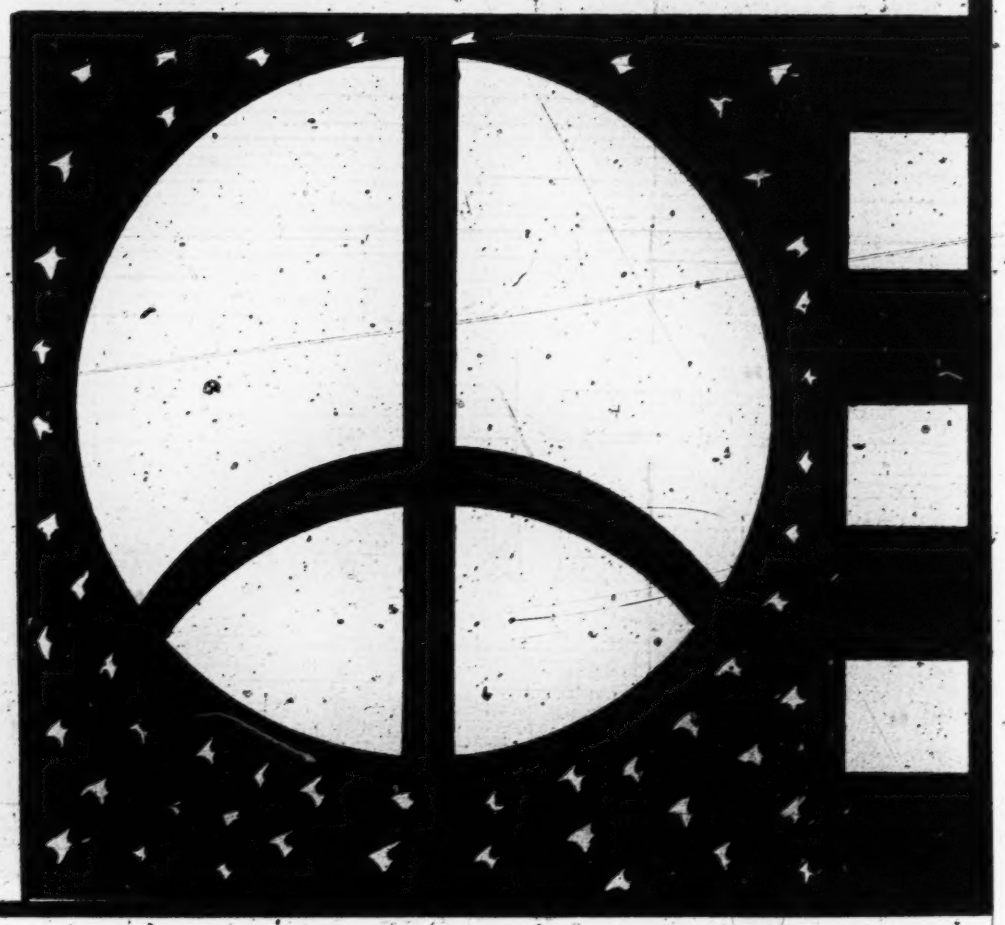
Signature of Defendant Alfred Leyva Time 140 PM Date 10/3/68

Exhibit I

PD 260-121 (1-68)

Exhibit I [SUMMONS] 5

BECAUSE



Rev. Al Carmines
Rev. Howard Moody

THE JUDSON MEMORIAL CHURCH
55 WASHINGTON SQUARE SOUTH
NEW YORK 12, N. Y.

A. Finley Schaef

WASHINGTON SQUARE METHODIST CHURCH
133 WEST 4th STREET
NEW YORK, N. Y. 10012

Room 1025, 5 Beekman St.
New York, N. Y. 10038

James Forest
Maggie Golden
Ed Tanny

N. Y. FREE PRESS
200 W. 72 ST.
N. Y., N. Y. 10023

Steve Handelman
Sue Ungaro
Steven Heller
Suzanne Gildens
Jim Buckley

Henry Ca
Judith Mayer

here

RESIST-SUPPPORT-IN-ACTION
133 WEST 4th STREET
NEW YORK, N. Y. 10012

Karl Bissinger
Gay Merrill
Robert Stern

WAR RESISTERS LEAGUE
5 BEEKMAN STREET
NEW YORK, N. Y. 10038

Richard Shuldiner
Jim Peck
Peter N. Kiger
Nada Cowin Ritter

Jean Hammond
Jack M

Gerald L. Cohen
Elsa J. Illingworth

RESISTANCE

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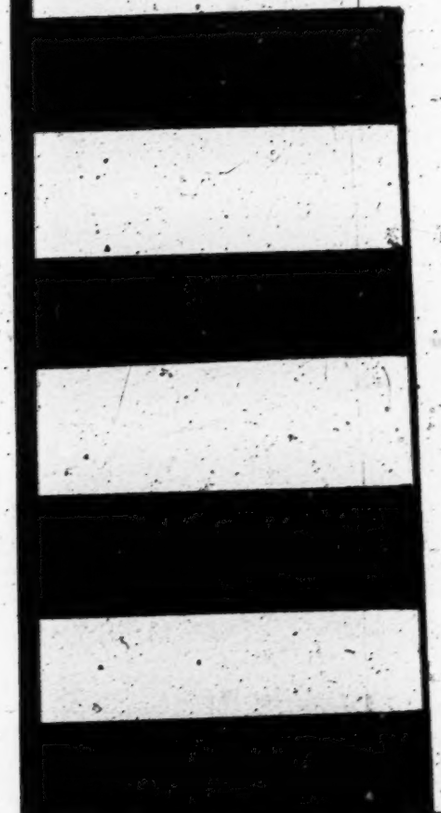
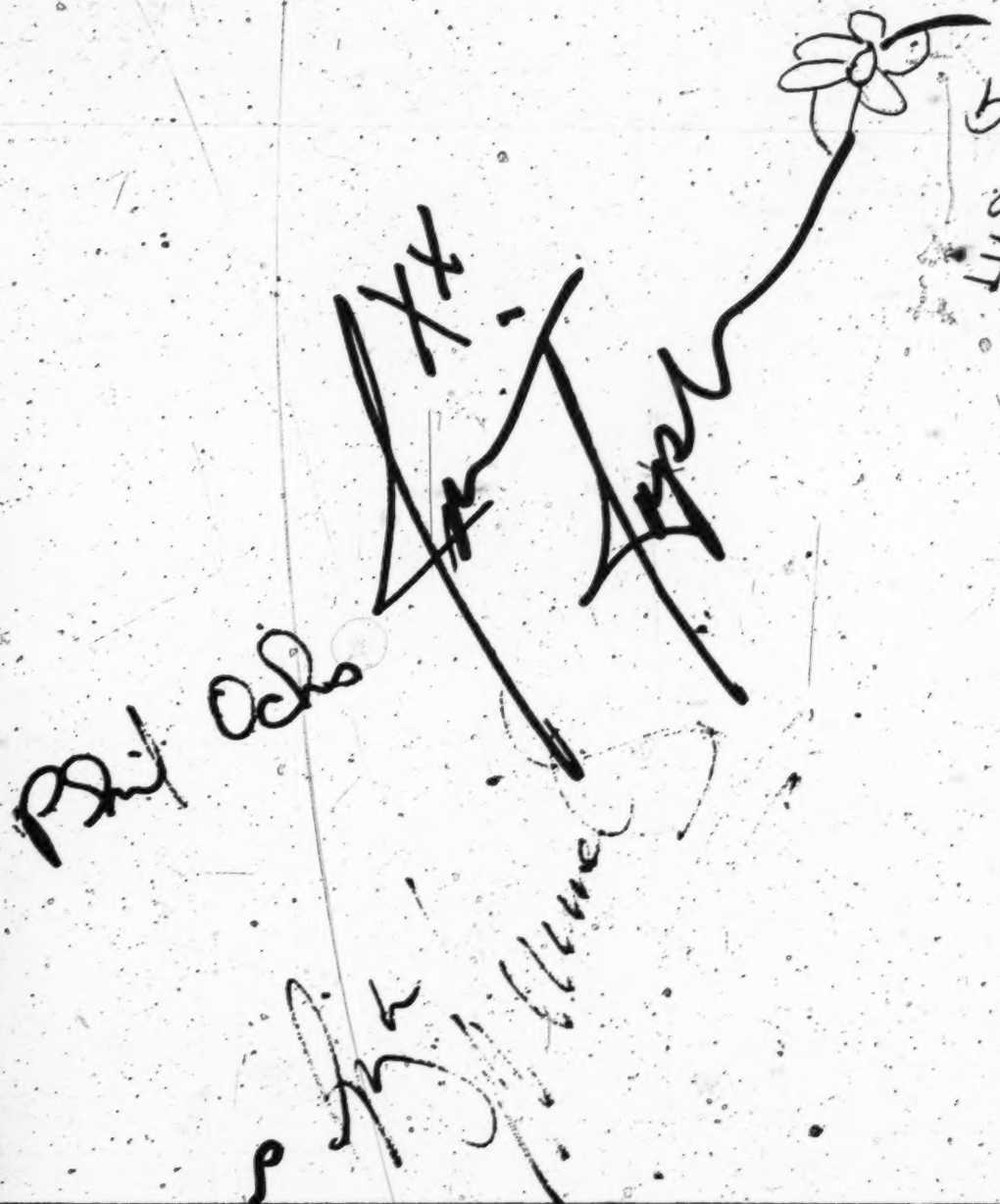
CARE !





THE WAR

awaiting the day we have a flag of humanity ...

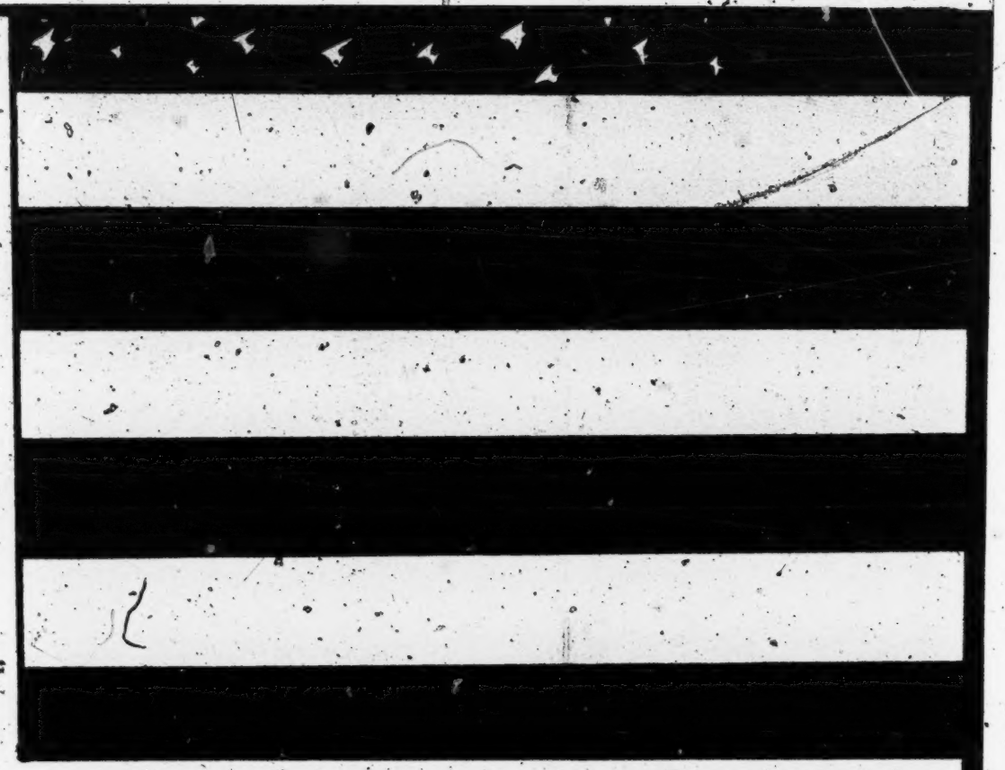
love, Joan Baez

Pat Paulsen

Tom Smothers

Eric Weinberger
Vietnam Peace
Parade Committee
17 E. 17 St., N.Y., N.Y. 10003
Phone (212) 255-1075

Linda Morse
Leonkroy



THE CATHOLIC PEAC
Room 1025, 5 Be
New York, N. Y.
James F
Maggie
Ly C

Dave Dellinger
NATIONAL MOBILIZATION COMMITTEE
5 BEEKMAN STREET
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Lenny Brody
Jayne Guarniere
Bob Robinson

Peter Leggieri

[redacted]

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Suzanne Fiddens
Jim Buckley

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OOM 10...
212) 732-4272

Brody
Guarnieri
Binson
Hall

WAR RESISTERS LEAGUE

5

New

Jam

Dave Dellinger
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Jayne Guarniere
Rod Robinson
Sydney Hadsell
Clarin Ritter

RESIST - SUPPPORT
133 WEST 4
NEW YORK,

Karl B
Kay M
Robert

Charles Pitts Kim Deitch
Allen Ansen
Peter Mikalajunas
Ken Jeadner
Fay Fenster
Donna Deitch
M. Rodriguez

ALL PROCEEDS OF THIS POSTER WILL GO TO THE RESISTA

RESS
ST.
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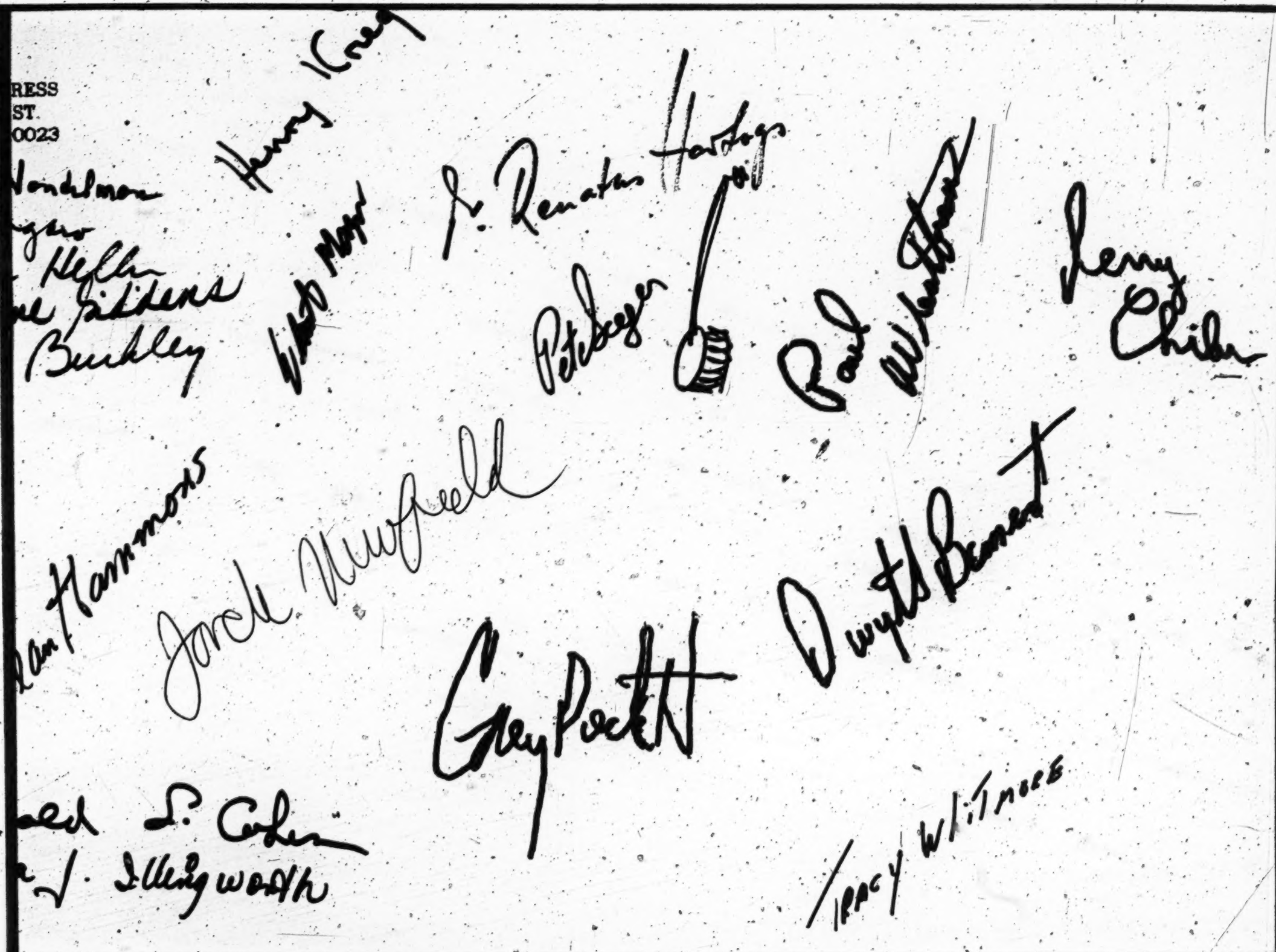
Henry Mancini
Dudley Moore
S. Renata Hartogs
Peter Boyle
Paul Winfield
Henry Chiles
Jack Nicholson
Gregory Peck
Dwight Bennett
Tracy Wiltrout